FEB
MICHAEL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-794

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS, ET AL.,
Petitioners

v.

CLAUDE S. BRINEGAR, *Secretary of the Department of Transportation*

REPLY TO BRIEF FOR THE RESPONDENT IN OPPOSITION

PETER T. BEARDSLEY
1616 P Street, N.W.
Washington, D. C. 20036
Attorney for American Trucking Associations, Inc.

ROBERT J. CORBER
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036
Attorney for National Association of Motor Bus Owners, American Transit Association and Milwaukee & Suburban Transport Corporation

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-794

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS, ET AL.,
Petitioners

v.

CLAUDE S. BRINEGAR, *Secretary of the Department of Transportation*

REPLY TO BRIEF FOR THE RESPONDENT IN OPPOSITION

The respondent belatedly [1] opposes grant of petition for certiorari of the questions raised by petitioners while noting that he has himself petitioned for certiorari of one of the very questions petitioners advance. In the respondent's petition for certiorari in No. 73-974 he complains of a literal reading of statutory language

---

[1] The petition for certiorari was docketed on November 16, 1973 and service on respondent acknowledged on November 19, 1973. The brief in opposition was not filed until February 2, 1974, nearly one month late, without requesting extension of time.

by the Court below leading to the result that sales of regrooved tires may be approved by the Secretary but not nonsale transactions. The petitioning carriers raise the same issue, pointing out that the Court of Appeals reached absurd results by holding that motor carriers may regroove tires for sale to others but may not regroove tires for their own use. Petitioners further contend that, instead of the equally absurd result espoused by respondent, the language and purpose of the statute are served by a reading that only laws other than the Safety Act (principally, the Interstate Commerce Act) apply to petitioners' regrooving of their own specially designed tires for their own use. Although the parties seek different interpretations of the Safety Act, they both raise the same issue and the petition here cannot logically or fairly be denied, as respondent urges, while granting the petition in No. 73-974.

The petitioners raise a number of issues allied to the mutually embraced sale-nonsale issue. These allied issues are whether the Safety Act may be applied to consumers rather than manufacturers and other commercial distributors of motor vehicles and items of motor vehicle equipment; whether the Safety Act *prohibits the use* of regrooved tires even though it *permits the sale* of such tires, as held below; whether regrooving of tires by petitioners effects a delivery for introduction in interstate commerce; whether overlapping jurisdiction under the Safety Act and Interstate Commerce Act, as interpreted by the Court below, should be resolved; and whether the Act applies to wholly intrastate commerce. These questions are not unrelated to the sale-nonsale issue. Indeed, except for the interstate versus intrastate commerce question, all

of them lead up to the ultimate question whether the Act permits sales while prohibiting other types of transactions in regrooved tires. Thus, the Court would necessarily consider these questions anyway in reviewing the sale-nonsale issue.

The respondent's opposition is infected throughout with the contention that petitioners' position would insulate from safety regulation nearly all commercially-used regrooved tires (Brief In Opposition, pp. 6, 7 and 10). As respondent must know, this is simply incorrect inasmuch as petitioners operating in interstate commerce have since the adoption of the Motor Carrier Act in 1935 been regulated in their use of regrooved tires. The same authority, now augmented by state laws, exists and is exercised today. The petitioners' position leaves no gap in regulation.

The respondent indicates his agreement with the majority of the Court below that the Safety Act reaches interstate commerce *and* activities affecting interstate commerce, i.e., intrastate commerce (Brief In Opposition, p. 9). However, as Judge Robb noted below, when Congress wishes a statute to extend to activities affecting interstate commerce it explicitly so states. It has not done that in the Safety Act.[2]

CONCLUSION

In seeking to have this case reviewed on his own terms, respondent ignores issues raised by petitioners which are necessarily involved in the sale-nonsale issue the parties agree this Court should review and he dis-

[2] The Act defines interstate commerce as "commerce between any place in a State and any place in another State, or between places in the same State through another State." 15 U.S.C. 1391(9).

regards the unequivocal exclusion by Congress of intrastate commerce from the reach of the Act. He merely shows disagreement with petitioners on the ultimate resolution of this controversy, not on the question whether this Court should review. In his petition in No. 73-974 respondent contends that the Court should review "the important question concerning the Secretary's regulatory authority under the Traffic and Motor Vehicle Safety Act." (Petition, p. 7). If it is important for respondent it is also important for petitioners. Thus, in final analysis, respondent has shown that he differs with petitioners' interpretation of the Act, but that the questions are important and should be reviewed by this Court.

Respectfully submitted,

PETER T. BEARDSLEY
1616 P Street, N.W.
Washington, D. C. 20036
Attorney for American Trucking Associations, Inc.

ROBERT J. CORBER
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036
Attorney for National Association of Motor Bus Owners, American Transit Association and Milwaukee & Suburban Transport Corporation